

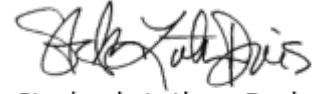
1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico

Filed 4/2/2025 8:27 AM

2 **STATE OF NEW MEXICO,**

3           Plaintiff-Appellee,



Stephanie Latimer Davis  
Acting Chief Clerk

4 v.

**No. A-1-CA-41928**

5 **CALVIN CASTILLOS,**

6           Defendant-Appellant.

7 **APPEAL FROM THE METROPOLITAN COURT OF BERNALILLO**  
8 **COUNTY**

9 **Asra Elliott, Metropolitan Court Judge**

10 Raúl Torrez, Attorney General

11 Santa Fe, NM

12 for Appellee

13 Bennett J. Baur, Chief Public Defender

14 Santa Fe, NM

15 Luz C. Valverde, Assistant Appellate Defender

16 Albuquerque, NM

17 for Appellant

18                           **MEMORANDUM OPINION**

19 **HENDERSON, Judge.**

20 {1} Defendant appeals his conviction for driving under the influence of liquor or  
21 drugs (DWI). [RP 164-65] We entered a notice of proposed disposition, proposing  
22 to affirm. Defendant filed a memorandum in opposition, which we have duly  
23 considered. Unpersuaded, we affirm.

1 {2} Defendant maintains that reversal is required because there was insufficient  
2 evidence of probable cause to arrest him for DWI. [MIO 4] In our proposed  
3 disposition, we suggested that the officer had probable cause based on “the very  
4 strong odor of alcohol” emanating from Defendant, an open alcohol container in the  
5 cup holder of Defendant’s vehicle, Defendant’s admission to drinking, and his poor  
6 performance on the standardized field sobriety tests (SFST). *See Schuster v. N.M.*  
7 *Dep’t of Tax’n & Revenue*, 2012-NMSC-025, ¶¶ 30-31, 283 P.3d 288 (observing  
8 that probable cause to arrest for DWI existed based on the defendant’s bloodshot,  
9 watery eyes, odor of alcohol, admission to drinking, and poor performance on field  
10 sobriety tests). Defendant’s MIO does not dispute that these facts establish probable  
11 cause, but instead argues an alternative interpretation of the evidence presented to  
12 the trial court. [MIO 6-8] *See State v. Jones*, 1998-NMCA-076, ¶ 9, 125 N.M. 556,  
13 964 P.2d 117 (“Our review of factual determinations is limited to determining  
14 whether there was substantial evidence to justify a warrantless arrest.”). Defendant  
15 is asking us to reweigh the evidence before the trial court to reach a different  
16 conclusion, which we decline to do. *See State v. Salas*, 1999-NMCA-099, ¶ 13, 127  
17 N.M. 686, 986 P.2d 482 (recognizing that it is for the fact-finder to resolve any  
18 conflict in the testimony of the witnesses and to determine where the weight and  
19 credibility lie). We therefore conclude that the trial court did not err in concluding  
20 that the arresting officer had probable cause to arrest Defendant for DWI.

1 {3} Defendant also asserts that exigent circumstances did not justify his arrest. *See*  
2 *City of Santa Fe v. Martinez*, 2010-NMSC-033, ¶ 16, 148 N.M. 708, 242 P.3d 275  
3 (“[T]he warrantless arrest of one suspected of committing DWI is valid when  
4 supported by both probable cause and exigent circumstances.”). We note that it does  
5 not appear from the record that Defendant preserved this argument. *See State v.*  
6 *Montoya*, 2015-NMSC-010, ¶ 45, 345 P.3d 1056 (“In order to preserve an issue for  
7 appeal, a defendant must make a timely objection that specifically apprises the trial  
8 court of the nature of the claimed error and invokes an intelligent ruling thereon.”  
9 (internal quotation marks and citation omitted)). Even assuming this argument was  
10 preserved, our Supreme Court has held that “[a]n on-the-scene arrest supported by  
11 probable cause will usually supply the requisite exigency.” *State v. Paananen*, 2015-  
12 NMSC-031, ¶ 26, 357 P.3d 958. Because Defendant was arrested on-the-scene, we  
13 conclude the exigency requirement was satisfied in this circumstance. [RP 1]

14 {4} Lastly, Defendant contends that there was insufficient evidence to support his  
15 conviction for per se DWI because the State did not establish that the Intoxylizer  
16 8000 had been properly calibrated in the last seven days consistent with  
17 7.33.2.14(C)(2)(b)(i) NMAC, and thus the breath alcohol test (BAT) card was  
18 inadmissible. [MIO 8-9] We review the trial court’s admission of the BAT card for  
19 an abuse of discretion. *See State v. Christmas*, 2002-NMCA-020, ¶ 8, 131 N.M. 591,  
20 40 P.3d 1035. “An abuse of discretion occurs when the ruling is clearly against the

1 logic and effect of the facts and circumstances of the case. We cannot say the trial  
2 court abused its discretion by its ruling unless we can characterize it as clearly  
3 untenable or not justified by reason.” *Id.* (internal quotation marks and citation  
4 omitted).

5 {5} In this case, the officer who administered the breath test testified that the  
6 Intoxylizer was “certified by the Scientific Laboratory Division on the date of the  
7 incident, the machine was properly calibrated, and the machine appeared to be  
8 working.” [MIO 10] In our proposed disposition, we relied on *State v. Martinez*,  
9 2007-NMSC-025, 141 N.M. 713, 160 P.3d 894, and suggested this was sufficient to  
10 admit the BAT card. Defendant did not address this proposed conclusion in his MIO,  
11 and we are not persuaded that our proposed conclusion was in error. *See Hennessy*  
12 *v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have  
13 repeatedly held that, in summary calendar cases, the burden is on the party opposing  
14 the proposed disposition to clearly point out errors in fact or law.”); *State v.*  
15 *Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a]  
16 party responding to a summary calendar notice must come forward and specifically  
17 point out errors of law and fact[,]” and the repetition of earlier arguments does not  
18 fulfill this requirement), *superseded by statute on other grounds as stated in State v.*  
19 *Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. Defendant directs us to *State v.*  
20 *Gutierrez*, 1996-NMCA-001, ¶ 5, 121 N.M. 191, 909 P.2d 751, for the proposition

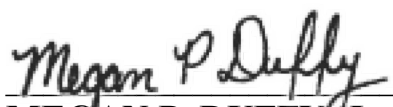
1 that the officer also needed to specifically testify that the breathalyzer had been  
2 calibrated in the last seven days. [MIO 10] However, that opinion does not indicate  
3 that there must be specific testimony that a breathalyzer has been calibrated in the  
4 last seven days before a BAT card can be admitted, and we believe the officer's  
5 testimony satisfied the State's burden that the Intoxylizer 8000 was properly  
6 calibrated. *See Martinez*, 2007-NMSC-025, ¶¶ 9-12. Therefore, we conclude that the  
7 trial court did not abuse its discretion in admitting the BAT card.

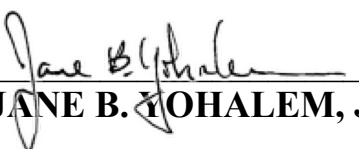
8 {6} Accordingly, for the reasons stated in our notice of proposed disposition and  
9 herein, we affirm.

10 {7} **IT IS SO ORDERED.**

11  
12   
SHAMMARA H. HENDERSON, Judge

13 **WE CONCUR:**

14   
15 MEGAN P. DUFFY, Judge

16   
17 JANE B. YOHALEM, Judge